



# Michigan Health Purchasers Coalition

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The Coalition comprises associations, consumer groups, corporations and unions involved in the provision of health care benefit coverage for millions of Michigan residents. The Coalition works on health legislation to promote more cost-effective health plan options.

## TESTIMONY ON HOUSE BILL 5254 HOUSE HEALTH POLICY COMMITTEE NOVEMBER 8, 2005

My name is Brian Broderick. I am the Legislative Director for The Economic Alliance for Michigan (EAM). EAM is a statewide coalition of business and unions in the for-profit sector working together on business and job issues. EAM focuses on ways to constrain business costs and increase employment opportunities. The Alliance is also a member and the convener of the Michigan Health Purchasers Coalition and it is on behalf of that Coalition that I am here today to state strong opposition to HB 5254.

The Purchasers' Coalition has long held that decisions on health benefits should be made by those who pay for them. Purchasers should have the unfettered right to select the types of health services and providers that they determine best meet their needs for affordable, high-quality care.

HB 5254 goes in direct contradiction to this long held policy by legislating overly restrictive statutory contract requirements that would deny health plans and employers the flexibility they need to design pharmacy networks that are best suited to their needs. In order to keep quality high and costs affordable, health plans and employers need to be able to adjust the size of their network as their needs change.

This bill represents an unprecedented attempt by the Legislature to regulate private parties contractual rights. The only exceptions that I can think of are those times when there is a compelling state interest for government to step in for the purpose of defending a protected class of citizens. In fact discrimination against a protected class is prohibited in the Prudent Purchaser Act. MCL 550.54. Proponents of this legislation have yet to establish such a justification for the extraordinary measure that HB 5254 represents.

HB 5254 should be rejected for the following reasons:

- 1) **Costly.** The language in the bill is so vague, it will likely produce an unending stream of litigation. There is no definition of "cause" and it mandates third party arbitration of any determination that a pharmacy provider's services are no longer needed. Current law allows a health care provider to be provided upon request a written explanation of the reasons for termination, MCL 550.53 Sec. 3 (5). Creating the ability to litigate these decisions inevitably translates to increased costs for consumers who will likely not benefit from the establishment of pharmacy networks through aggressive provider bidding. Such bidding is an effective cost management tool for health plans and employers.

2) **Protecting the Public.** OFIS is the lead state agency charged with assuring reasonable access to health care providers in this state. Which pharmacy or health care provider is included on a panel is the exclusive right of the plan sponsor. It is the plan sponsor that has the best ability to determine the quality and access provided by a health care provider. Proponents of HB 5254 have yet to show how creating another layer of notice provisions and appeal rights protects the public in any way.

3) **Violates Free Enterprise.** Michigan would be striking new ground by regulating contracts through "due process" provisions that interfere with market-based contracting and impose burdensome, restrictive regulatory requirements on private market agreements. This sort of legislation is the antithesis of the free enterprise system – it would give government and judges the ability to evaluate the propriety of business decisions regarding reasonableness of cause for removal from a provider panel.

An end result will likely be limited pharmacy provider panels as panel sponsors will seek to protect themselves and restrict the number of pharmacy providers on their panel to avoid protracted and costly arbitration/litigation.

The Michigan Health Purchasers' Coalition urges this Committee to reject HB 5254. The bill requires a host of burdensome regulatory requirements to private pharmacy network contracts would hinder rather than promote consumer interests and protect only the interests of the pharmacies.

In this era of rapidly escalating drug costs for consumers, state and national policymakers should be focused on encouraging the use of innovative and effective cost control techniques rather than undermining the basic contracting rights of private parties.